



630

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. (C).No. 347 of 2006

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant : The National Insurance Company Ltd
Non-applicant No.5 Branch Jagdalpur District Bastar, Through
its Divisional Manager, Divisional Office,
Bilaspur, near Hotel Gazibo, Vyapar Vihar
Road, Bilaspur, Tah. & District Bilaspur
(CG)

Versus

Respondent No.1 : 1. Paldeo Narayan, S/o late Paldeo Kistaiyya,
Applicant aged about 28 years, R/o Gorla,
P.S.Bhopalpatnam, Tah. & Distt.
Dantewada, South Bastar (CG)

Respondent No.2 : 2. Dumpa Galaya, S/o Aumpa Roshaiyya,
Non-applicant No.1 aged about 28 years, R/o Gorla,
P.S.Bhopalpatnam, Tah. & Distt.
Dantewada, South Bastar (CG)

Respondent No.3 : 3. Talandi Narsaiya, S/o late Tolandi Koti, R/o
Non-applicant No.2 Gorla, P.S. Bhopalpatnam, Tah. & Distt.
Dantewada, South Bastar (CG)

Miscellaneous Appeal Under Section 173 of the Motor Vehicles Act, 1988

Present:

Shri Naval Kishore Agrawal, learned Sr. Advocate with Shri Qamarul Aziz
and Shri Deepak Gupta, counsel for the appellant.

ORAL ORDER
(Passed on 17.8.2007)

Heard.

2. The appellant/insurer is aggrieved by an award dated 25.07.2006
passed by the Additional Motor Vehicles Accidents Claims Tribunal,
Dantewada (hereinafter referred to as the M.A.C.T.) in claim case No. 144 of

2004 whereby compensation of Rs.84,000/- was awarded in a case of accidental death.

3. It is not disputed that Ku. Paldeo Gopakka, aged 30 years, was travelling on the Trailer No.M.P. 23-GA/1387 (henceforth, the Trailer) attached to the Tractor No.M.P.No.23-GA/1386 (henceforth, the Tractor). Due to rash and negligent driving of respondent No.2 herein, near B.R.O.Camp, Bhopalpatnam, she fell and was run over by the Trailer. Quantum of compensation awarded by the M.A.C.T. is also not in question. It is also not dispute that the Tractor/Trailer was insured by the appellant/insurer under farmers' package insurance policy.

4. The respondent No.1/claimant had pleaded that at the time of accident, the Tractor/Trailer was being used for agricultural purposes and was carrying the labourers for proceeding to the fields for conducting sowing operations. The respondent No.3/owner admitted that the deceased was travelling on the Trailer at the time of accident and the Tractor was being used for agricultural purpose at the time of accident. The appellant/insurer denied in paragraph 5 of the written statement that the Tractor/Trailer was being used for agricultural purpose. No specific breach of policy of insurance was pleaded. In other words, it was not pleaded specifically that at the time of accident the Tractor/Trailer was being used for carrying a marriage party.

5. Placing reliance on the evidence led by the claimant, the M.A.C.T. held that the Tractor/Trailer was being used for agricultural purpose and breach of policy of insurance was not established. Consequently, it awarded compensation of Rs.84,000/- against the appellant/insurance company.

6. The sole point urged by Shri Naval Kishore Agrawal, learned Senior Advocate for the appellant is that the claimant had proved the first information report Ex.P.1 lodged by him which revealed that the Tractor/Trailer was being used for carrying a marriage party of 30 persons. It was urged that breach of policy was thus clearly established, and therefore, in view of the admission of the claimant under Section 18 of the Evidence Act, the M.A.C.T. was in error in placing reliance on the evidence of the claimant and awarding compensation against the appellant/insurer. No other point was urged.

7. No one appeared for the respondents at the time of final hearing.

8. Having considered the submissions of the learned Senior Advocate for the appellant/insurer, I have perused the record. It is well settled that the initial burden of proving the breach of policy is upon the appellant/insurer. It is pertinent to note that the claimant had specifically deposed before the M.A.C.T. that at the time of the accident the deceased was travelling on the Trailer for the purpose of going towards the agricultural field for sowing operations. So far as the first information report Ex.P.1 is concerned, it has been formally exhibited by the M.A.C.T. without narrating the contents to its

maker i.e. the respondent No.1/claimant. The appellant/insurer also did not contradict the claimant from the F.I.R. Ex.P.1. The appellant/insurer had also produced before the M.A.C.T. a report of the Investigator appointed by the appellant/insurer which did not show that the Tractor/Trailer was being used for carrying a marriage party at the time of accident. The testimony of A. Kujur, Branch Manager of the insurance company was rightly rejected by the M.A.C.T. on the ground that he did not witness the accident. Another important factor which needs to be noticed is that the appellant/insurance company did not, in its written statement also, take a specific plea that the Tractor/Trailer was being used for the purpose of carrying a marriage party at the time of accident. The insurance company also did not produce the insurance policy before the M.A.C.T. to prove the terms under the package of insurance policy. The certificate of insurance filed before the M.A.C.T. only speaks that the policy did not cover use for organized racing, pace-making or reliability trails. Under these circumstances, the M.A.C.T. was wholly justified in recording a finding that breach of policy condition was not established by the insurer.

9. In the result, there is no merit in this appeal which is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge